

86<sup>th</sup> Legislative Session – 2011

Committee: House Transportation

Tuesday, February 08, 2011

P - Present  
E - Excused  
A - Absent

Roll Call

P Verchio, Chair  
P Novstrup (David), Vice-Chair  
P Van Gerpen  
P Liss  
P Steele  
P Hansen (Jon)  
P Hickey  
P Rozum  
P Hubbel  
E Elliott  
P Iron Cloud III  
P Street  
P Sigdestad

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chairman Verchio.

Chairman Verchio passed the gavel to Vice Chair Novstrup.

MOTION: TO APPROVE THE MINUTES OF THURSDAY, FEBRUARY 3, 2011

Moved by: Hansen (Jon)  
Second by: Hickey  
Action: Prevailed by voice vote.

HB 1215: repeal certain refund provisions of the motor fuel tax for certain nonhighway agricultural use of motor fuels and to provide for the distribution of such motor fuel tax.

Presented by: Representative David Sigdestad

Proponents: Angela Ehlers, SD Association of Conservation Districts  
Rick Vallery, SD Oilseeds Council  
Senator Larry Tidemann  
Representative Dean Schrempp  
Dick Howard, SD Association of Towns & Townships  
Brenda Forman, SD Association of Cooperatives  
Lorin Pankratz, SD County Commissioners  
Deb Mortenson, Associated General Contractors of SD - HHU Chapter

MOTION: AMEND HB 1215

1215oc

On page 2, line 14, of the printed bill, delete "seventy-five" and insert "one hundred thirty-five".

On page 3, line 7, delete "three" and insert "five".

On page 3, line 8, delete "fifty".

On page 3, line 14, delete "one million" and insert "seven hundred thousand".

On page 4, after line 10, insert:

" Section 5. That § 10-47B-135 be amended to read as follows:

10-47B-135. No refund of motor fuel or special fuel taxes paid may be made for any of the following uses of fuel:

- (1) Fuel used in motor vehicles operated on the public highways of this state;
- (2) Fuel used for propulsion on the highway in any vehicles, machinery, or equipment for any highway construction or maintenance work which is paid for, wholly or in part, by public moneys;
- (3) Fuel used in aircraft or watercraft;
- (4) Undyed special fuel used in off-road machinery or equipment; ~~or~~
- (5) Fuel used from the engine fuel supply tank by a motor vehicle while idling. Fuel used by a motor vehicle while idling shall be included in the total amount of fuel consumed when calculating average miles per gallon; or

- (6) Fuel used in any motor vehicle, recreation vehicle, or farm equipment used for nonhighway agricultural purposes or, unless otherwise provided by this chapter, used in any motor vehicle or equipment for nonhighway commercial uses.

Section 6. That § 10-47B-144 be amended to read as follows:

10-47B-144. Interest at the rate provided for under § 10-59-6 shall be paid on any refund claim amount authorized by §§ ~~10-47B-119~~10-47B-119.2 to 10-47B-131, inclusive, which has not been refunded to the claimant within sixty days of acceptance by the department during the months of January, February, or March. Claims received during any other month shall be paid within forty-five days, otherwise interest shall be paid to the claimant. No interest may be paid for refunds made to interstate fuel tax agreement licensees or licensed interstate users.

Section 7. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

The Legislature finds, based on historical data, that one million four hundred ten thousand dollars represents the amount of motor fuel taxes collected annually on motor fuel for nonhighway agricultural uses. The Legislature further finds that these funds should be utilized in a manner which benefits agriculture and the citizens of the state.

Section 8. That § 38-7-26 be amended to read as follows:

38-7-26. The coordinated natural resources conservation fund consists of money transferred from the ~~unclaimed tax refunds from the sale of motor fuel for nonhighway agricultural uses in the motor fuel tax fund as provided in § 10-47A-11~~ 10-47B-149, and all public and private sources including legislative appropriations or federal grants.

Section 9. That § 10-47B-119.1 be repealed.

~~—10-47B-119.1. Any special fuel or motor fuel user may apply for and obtain a refund of fuel taxes imposed and paid to this state for motor fuel or special fuel purchased and used as racing fuel in motor vehicles operated solely off of public highways in organized racing events.~~

Section 10. That § 10-47B-127 be repealed.

~~—10-47B-127. Any undyed special fuel consumer may apply for and obtain a refund of fuel taxes imposed and paid to this state, for undyed special fuel purchased and used by the consumer in the engine fuel supply tank of a motor vehicle used for nonhighway agricultural purposes or nonhighway commercial uses, except special fuel used to power a refrigeration unit which is attached to the engine fuel supply tank of the motor vehicle. This refund shall be calculated by multiplying the~~

~~motor vehicle's average miles per gallon during the claim period times the number of nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records and odometer readings.~~

Section 11. That § 10-47B-138 be repealed.

~~10-47B-138. Any consumer who desires to claim refund of motor fuel or special fuel taxes paid to this state, shall apply for a refund claimant license from the department before or at the time that the first claim for refund is made. Applications for licenses and claims for refund shall be made on forms provided by the department. Upon approval of the application by the department, a nonassignable license and claimant number shall be issued to each claimant. Each subsequent claim for refund is to bear the claimant's assigned refund permit number.~~

Section 12. That § 10-47B-139 be repealed.

~~10-47B-139. The claim for refund of fuel taxes which is allowed under this chapter shall contain the following information:~~

- ~~(1) The name and mailing address of the refund claimant;~~
- ~~(2) The refund claimant license number assigned by the department to the claimant;~~
- ~~(3) The claim period during which fuel was purchased and used;~~
- ~~(4) If applicable, a listing of the licensed motor vehicles owned or operated by the claimant during the claim period;~~
- ~~(5) If applicable, information concerning the miles driven and fuel consumed by the vehicles listed in subdivision (4) of this section;~~
- ~~(6) If the claimant is the user of the fuel, a summary of fuel purchased during the claim period;~~
- ~~(7) If the claimant is the seller of the fuel, a summary of the refundable sales;~~
- ~~(8) The claimant's signature verified under oath; and~~
- ~~(9) Any other information which the secretary deems necessary for the administration of this section.~~

Section 13. That § 10-47B-140 be repealed.

~~10-47B-140. Motor fuel and special fuel tax refund claims of consumers shall be accompanied by proof that the South Dakota fuel tax has been paid. Proof of tax payment may be presented in one or more of the following forms:~~

- ~~(1) An original invoice. An invoice shall be an original copy which is serially numbered by machine and prepared in duplicate. The original copy shall be given to the purchaser either at the time of delivery or upon payment of the amount due; or~~
- ~~(2) Any of the following forms of proof containing the information required in § 10-47B-159:~~
  - ~~(a) A credit card receipt. A receipt may be prepared using NCR (no carbon required) paper or other means of data transferal. Only an unaltered original copy of a credit~~

- card receipt is accepted; or
- ~~———— (b) — A statement generated from an unattended, automated pump facility. An itemized monthly statement is acceptable if the statement contains the required invoice information and if the seller has marked the statement as having been paid. If a statement is used as proof of tax payment, the use of double-faced carbon, NCR (no carbon required) paper, and serial numbering are not required in preparation of the statement.~~

Section 14. That § 10-47B-141 be repealed.

~~———— 10-47B-141. Any claim for refund of motor fuel or special fuel tax shall be received by the department within fifteen months of the date the fuel was originally purchased in order to be accepted for refund. Fuel purchased more than fifteen months from the date the claim is received is forever barred from refund eligibility.~~

Section 15. That § 10-47B-142 be repealed.

~~———— 10-47B-142. The secretary may, in order to establish the validity of any claim for refund of motor fuel or special fuel tax, require the claimant to furnish any additional proof of the validity of the claim the secretary may determine necessary. The department may examine the books and records of the seller and purchaser for this purpose. The failure of the claimant to furnish the books or records for examination shall constitute a waiver of all rights to the refund on account of the transaction questioned.~~

Section 16. That § 10-47B-154 be repealed.

~~———— 10-47B-154. The Legislature finds that not all motor fuel taxes which qualify for the nonhighway agricultural motor fuel tax refund are, in fact, refunded under the procedure set forth in this chapter. The Legislature further finds that a certain amount of these unclaimed tax refunds from the sale of motor fuel for nonhighway agricultural uses should be utilized for agricultural purposes in a manner which benefits both agriculture and the citizens of the state by preserving its natural resources. Therefore, the Legislature declares that an amount equal to thirty-five percent of the claimed refunds authorized by § 10-47B-119, not to exceed one million five hundred thousand dollars in any single fiscal year, represents the amount of unclaimed tax refunds from the sale of motor fuel tax for nonhighway agricultural uses. The Legislature further declares that it is the policy of this state to use these funds, representing the unclaimed tax refunds from the sale of motor fuel for nonhighway agricultural purposes, to implement the coordinated natural resources conservation program."~~

Moved by: Street  
Second by: Rozum  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1215 AS AMENDED

Moved by: Street  
Second by: Van Gerpen  
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION REFER HB 1215 TO APPROPRIATIONS AS AMENDED

Moved by: Verchio  
Second by: Hansen (Jon)  
Action: Failed by roll call vote. (6-6-1-0)

Voting Yes: Verchio, Novstrup (David), Liss, Hansen (Jon), Hickey, Hubbel

Voting No: Van Gerpen, Steele, Rozum, Iron Cloud III, Street, Sigdestad

Excused: Elliott

MOTION: DO PASS HB 1215 AS AMENDED

Moved by: Street  
Second by: Van Gerpen  
Action: Prevailed by roll call vote. (8-4-1-0)

Voting Yes: Van Gerpen, Steele, Hickey, Rozum, Hubbel, Iron Cloud III, Street, Sigdestad

Voting No: Verchio, Novstrup (David), Liss, Hansen (Jon)

Excused: Elliott

HB 1221: establish a task force on teen driving safety.

Presented by: Representative Nick Moser  
Proponents: Greg Boris, South Dakota Voices for Children  
Mark Madeja, AAA

MOTION: AMEND HB 1221

1221oa

On page 1, line 5, of the printed bill, delete "2012" and insert "2013".

Moved by: Hansen (Jon)  
Second by: Iron Cloud III  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1221 AS AMENDED

Moved by: Hansen (Jon)  
Second by: Hubbel  
Action: Prevailed by roll call vote. (8-4-1-0)

Voting Yes: Novstrup (David), Liss, Hansen (Jon), Hickey, Rozum, Hubbel, Iron Cloud III, Street

Voting No: Verchio, Van Gerpen, Steele, Sigdestad

Excused: Elliott

HB 1216: prohibit certain contract restrictions on the use of ethanol blender pumps by retailers.

Presented by: Representative Mitch Fargen  
Proponents: Hunter Roberts, Department of Tourism and State Development  
Harry Christianson, Ethanol Producers of SD  
John Kerstiens, SD Farmers Union  
Opponents: Dawna Leitzke, SD Petroleum & Propane Marketers Association  
Jim Houk, SD Petroluem & Propane Marketers  
Larry Mann, M. G. Oil Company

MOTION: AMEND HB 1216

1216ta

On page 1, line 10, of the printed bill, delete "and the product commonly or commercially" and insert "and any motor fuel made from a blend, in any ratio, of gasoline and the product commonly or commercially known as E-85 or an ethanol blend and the product commonly or commercially known as E-85.".

On page 1, delete line 11.

On page 2, line 21, delete "Section 3, Chapter" and insert "section 2, chapter".

Moved by: Street  
Second by: Hansen (Jon)  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1216 AS AMENDED

Moved by: Hansen (Jon)  
Second by: Steele  
Action: Prevailed by roll call vote. (7-5-1-0)

Voting Yes: Novstrup (David), Steele, Hansen (Jon), Hickey, Iron Cloud III, Street, Sigdestad

Voting No: Verchio, Van Gerpen, Liss, Rozum, Hubbel

Excused: Elliott

HB 1225: conduct a study on the feasibility of maintaining aircraft under the control of the Department of Transportation.

Presented by: Representative Susy Blake  
Opponents: Darin Bergquist, Department of Transportation

MOTION: DEFER HB 1225 TO THE 41<sup>ST</sup> LEGISLATIVE DAY

Moved by: Steele  
Second by: Hansen (Jon)  
Action: Prevailed by roll call vote. (9-3-1-0)

Voting Yes: Verchio, Novstrup (David), Van Gerpen, Liss, Steele, Hansen (Jon), Hickey, Rozum, Hubbel

Voting No: Iron Cloud III, Street, Sigdestad

Excused: Elliott

MOTION: ADJOURN

Moved by: Van Gerpen  
Second by: Hansen (Jon)  
Action: Prevailed by voice vote.



Diane Mellan  
Committee Secretary

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Mike Verchio, Chair